

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D. C. 20554

ORIGINAL  
FILE

RECEIVED  
NOV 23 1992  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b)  
Table of Allotments  
FM Broadcast Stations  
(Olathe and Topeka, Kansas)

)  
)  
) MM Docket No. 92-218  
) RM No. 8053  
) RM No. 8054  
)

To: Chief, Allocations Branch  
Policy and Rules Division

**JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT**

Bott Broadcasting Company ("Bott") and Margaret Escriva ("Escriva"), who have submitted the above-referenced mutually exclusive proposals for upgrades to Class C3 of their FM construction permits for, respectively, Olathe and Topeka, Kansas, hereby jointly submit a Settlement Agreement which will resolve the mutual exclusivity through a dismissal of Escriva's proposal (RM No. 8054). The Settlement Agreement is submitted for approval pursuant to Section 1.420(j) of the Commission's rules.

Attached hereto as Exhibit 1 is the Settlement Agreement between the parties. It contains a certification under penalty of perjury that no consideration has been promised or paid in connection with the dismissal of Escriva's rulemaking proposal other than as reflected in the agreement, which provides for a \$8,000 payment in return for such dismissal. Exhibit 2 hereto is a declaration of Escriva certifying that she is not to receive any money or other consideration in excess of her legitimate and prudent expenses in connection with her rulemaking

No. of Copies rec'd 214  
List A B C D E

proposal. An itemization of her expenses is included with the declaration. Together, these materials satisfy all of the requirements of Section 1.420(j) of the Commission's rules.

For its part, Bott additionally reiterates its earlier representations, contained in its rulemaking proposal, to reimburse Escriva an amount equal to her documented expenses incurred in connection with the change in frequency of her Topeka construction permit from Channel 223A to Channel 257A, which is required to accommodate Bott's upgrade on Channel 222A at Olathe. This reaffirmation also is included in Paragraph 4 of the Settlement Agreement. Bott further represents that once its proposed upgrade is approved, it will file an application for Class C3 facilities and, upon grant, will promptly construct and commence operations of the new station.

For her part, Escriva consents and agrees to the substitution of Channel 257A for Channel 223A at Topeka and the modification of her construction permit accordingly. As noted, this channel change is necessary to accommodate Bott's Olathe upgrade on Channel 222C3. However, it is requested that the new Channel 257A allotment for Topeka be made at the following coordinates in lieu of those specified in footnote 4 of the Notice of Proposed Rulemaking and Order to Show Cause, 7 FCC Rcd 6367 (Policy and Rules Div., October 2, 1992): 39° 02' 56" North/95° 40' 32" West. This site location is fully spaced under Section 73.207 of the Commission's rules and is consistent with Escriva's current construction permit (File No. BMPH-920602IG).

WHEREFORE, These matters considered, it is respectfully requested that:

- (a) The Settlement Agreement attached hereto be APPROVED;

3.

(b) Escriva's rulemaking proposal for Topeka, Kansas (RM No. 8054) be  
DISMISSED WITH PREJUDICE;

(c) Bott's proposal to amend the Table of Allocations to substitute Channel  
222C3 for Channel 222A at Olathe, Kansas and to substitute Channel 257A for Channel 223A  
at Topeka, Kansas be APPROVED;

(d) Escriva's construction permit (File No. BPH-871124MG) be MODIFIED  
to specify operation on Channel 257A in lieu of Channel 223A; and

(e) This proceeding be TERMINATED.

Respectfully submitted,

BOTT BROADCASTING COMPANY

By



Harry C. Martin

Its Attorney

Reddy, Begley & Martin  
1001 22nd Street, N.W.  
Suite 350  
Washington, D.C. 20037

MARGARET ESCRIVA

By

Meredith S. Senter, Jr.

Her Attorney

Leventhal, Senter & Lerman  
2000 K Street, N.W.  
Suite 600  
Washington, D.C. 20006

November 23, 1992

3.

(b) Escriva's rulemaking proposal for Topeka, Kansas (RM No. 8054) be  
**DISMISSED WITH PREJUDICE;**

(c) Bott's proposal to amend the Table of Allocations to substitute Channel  
222C3 for Channel 222A at Olathe, Kansas and to substitute Channel 257A for Channel 223A  
at Topeka, Kansas be **APPROVED;**

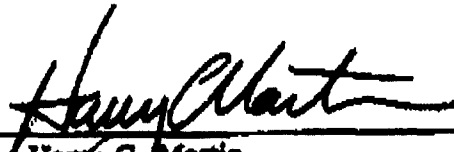
(d) Escriva's construction permit (File No. BPH-871124MG) be **MODIFIED**  
to specify operation on Channel 257A in lieu of Channel 223A; and

(e) This proceeding be **TERMINATED.**

Respectfully submitted,

**BOTT BROADCASTING COMPANY**

By



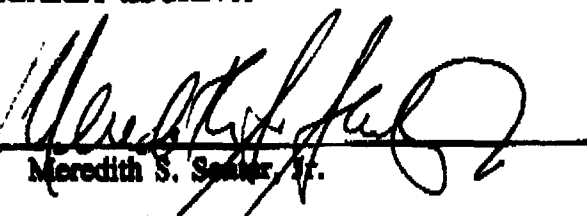
Harry C. Martin

Its Attorney

Reddy, Begley & Martin  
1001 22nd Street, N.W.  
Suite 350  
Washington, D.C. 20037

**MARGARET ESCRIVA**

By



Meredith S. Senter, Jr.

Her Attorney

Leventhal, Senter & Lerman  
2000 K Street, N.W.  
Suite 600  
Washington, D.C. 20006

November 23, 1992

**Exhibit 1**

**SETTLEMENT AGREEMENT**

## SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this 23rd day of November, 1992 by and between BOTT BROADCASTING COMPANY, a Delaware Corporation ("BOTT"), and MARGARET ESCRIVA, an individual residing in Houston, Texas ("ESCRIVA").

WHEREAS, BOTT and ESCRIVA have filed petitions with the Federal Communications Commission ("FCC") proposing the upgrades to Class C3 of their respective Class A construction permits for new FM radio stations at, respectively, Olathe and Topeka, Kansas;

WHEREAS, these upgrade proposals are mutually exclusive in the respect that only one of them may be granted by the FCC;

WHEREAS, ESCRIVA is willing to dismiss her upgrade proposal for Topeka, Kansas in return for a cash payment by BOTT;

WHEREAS, BOTT is willing to make such a cash payment to ESCRIVA in order to ensure the speedy approval of its Olathe, Kansas upgrade proposal; and

WHEREAS, both BOTT and ESCRIVA believe the public interest will be served by settling and terminating the conflict between their respective upgrade proposals, thereby simplifying the FCC's proceedings and making possible the inauguration of a new wide-area FM service at Olathe, Kansas at an earlier date than otherwise would be possible;

NOW, THEREFORE, It is agreed and contracted, by and between BOTT and ESCRIVA, in consideration of their promises and undertakings hereinafter set forth, as follows:

1. This Agreement is subject to the prior approval of the FCC.

2. The parties hereto will cause to be prepared a joint request for approval of this Agreement ("Joint Request") to be filed with the FCC on Monday, November 23, 1992, in which the parties will request the FCC to approve this Agreement, dismiss the ESCRIVA upgrade proposal for Topeka, Kansas (designated "RM-8054") and adopt BOTT's proposal for the upgrade of Station KCCV-FM, Olathe, Kansas to Class C3 (designated "RM-8053").

3. In consideration for the dismissal of the ESCRIVA upgrade proposal, BOTT shall pay ESCRIVA the sum of \$8,000.00 (or such lesser sum as the FCC may approve as having been legitimately and prudently expended by ESCRIVA on her Topeka upgrade proposal) within five (5) business days after the FCC approves this Settlement Agreement. Bott has deposited the sum of \$8,000.00 into the escrow account of Reddy, Begley & Martin and the amount due to ESCRIVA shall be paid out of this account.

4. BOTT reaffirms that it also will pay to ESCRIVA, as required by the FCC, an amount equal to her documented expenses incurred in connection with the change in frequency of her Topeka, Kansas construction permit from Channel 223A (92.5 MHz) to Channel 257A (99.3 MHz).

5. Each party will prepare the documentation required by the FCC necessary to support the Joint Request. Further, each party will promptly submit to the FCC any additional information

- 3 -

pertaining to it which, from time to time, may be necessary or appropriate to expeditiously secure FCC approval of this Agreement and the BOTT upgrade proposal.

6. The parties hereto warrant and declare under penalty of perjury that neither they nor any person associated with them have directly or indirectly paid or promised to pay any party hereto or any person associated with such party any consideration whatsoever for the withdrawal and dismissal of the ESCRIVA upgrade proposal, or the grant of the BOTT upgrade proposal, except as expressly recited and disclosed in this Agreement.

7. This Agreement may be signed in counterparts with the same force and effect as if all signatures were upon each counterpart copy.

8. The laws of the State of Kansas shall govern the construction and enforcement of this Agreement.

IN WITNESS WHEREOF, The parties hereto have executed this Agreement as of the date first above written.

BOTT BROADCASTING COMPANY

By Richard P. Bott  
Richard P. Bott, President

MARGARET ESCRIVA

---



11/20/92 15:53 REDDY BEBLEY MARTIN → 17133840066PP164

NO.081 P084

- 3 -

pertaining to it which, from time to time, may be necessary or appropriate to expeditiously secure FCC approval of this Agreement and the BOTT upgrade proposal.

6. The parties hereto warrant and declare under penalty of perjury that neither they nor any person associated with them have directly or indirectly paid or promised to pay any party hereto or any person associated with such party any consideration whatsoever for the withdrawal and dismissal of the ESCRIVA upgrade proposal, or the grant of the BOTT upgrade proposal, except as expressly recited and disclosed in this Agreement.

7. This Agreement may be signed in counterparts with the same force and effect as if all signatures were upon each counterpart copy.

8. The laws of the State of Kansas shall govern the construction and enforcement of this Agreement.

IN WITNESS WHEREOF, The parties hereto have executed this Agreement as of the date first above written.

BOTT BROADCASTING COMPANY

By Richard P. Bott, President

MARGARET ESCRIVA

Margaret Escrivá

**DECLARATION OF MARGARET ESCRIVA**

**DECLARATION OF MARGARET ESCRIVÁ**

I, Margaret Escrivá, hereby declare under penalty of perjury, as follows:

1. I am the permittee of FM station KESC, Channel 223A, at Topeka, Kansas.
2. On June 17, 1992, I petitioned the Commission to allocate FM Channel 223C3 to Topeka, and modify my construction permit to specify operation on the upgraded channel. This proposal was included in a Notice of Proposed Rule Making, along with the mutually exclusive proposal of Bott Broadcasting Company ("Bott") to upgrade Bott's construction permit for FM station KCCV-FM, Channel 222A, at Olathe, Kansas to Channel 222C3 (and to modify my construction permit from Channel 223A to Channel 257A). See Olathe and Topeka, Kansas, DA 92-1215 (Alloc. Branch, released October 2, 1992).
3. I have now entered into a Settlement Agreement with Bott, whereunder I will dismiss my upgrade proposal for Topeka in return for a cash payment of \$8,000.00 from Bott (plus Bott's pledge to pay me, as required by the Commission, an amount equal to my documented expenses incurred in connection with the change in frequency of station KESC from Channel 223A to Channel 257A) once the Commission approves the Agreement. A copy of

- 2 -

this agreement is attached to the Joint Request for Approval of Settlement Agreement.

4. In preparing and prosecuting my petition to upgrade station KBSC to Channel 223C3 and evaluating my options in responding to the Commission's Order to Show Cause why station KBSC should not be changed from Channel 223A to Channel 257A, I have incurred engineering consulting expenses in the amount of \$2,600.00, and legal expenses in excess of \$5,400.00, for a total in excess of the \$8,000.00 cash payment to be made by Bott.

MARGARET ESCRIVÁ

A handwritten signature in cursive script, reading "Margaret Escrivá", is written over a horizontal line.

Dated: November 23, 1992

**CERTIFICATE OF SERVICE**

I, Pamela R. McKethan, hereby certify that on this 23rd day of November, 1992,  
a copy of the foregoing **JOINT REQUEST FOR APPROVAL OF SETTLEMENT  
AGREEMENT** was hand delivered to:

Ms. Kathleen Scheuerle  
Federal Communications Commission  
Mass Media Branch  
2025 M Street, N.W., Room 8317  
Washington, D.C. 20554

A handwritten signature in black ink, appearing to read 'P R McKethan', written over a horizontal line.

Pamela R. McKethan